Malakoff Bhd & Anor v Pentadbir Tanah, Kedah

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO K-01-155 OF 1995
SHAIK DAUD, SITI NORMA YAAKOB AND DENIS ONG JJCA
15 DECEMBER 1999

Land Law *— Acquisition of land — Market value — Appeal against award of compensation — Award based on common comparable value of lands in vicinity — Whether cogent reasons to intefere with findings*

The appellants were the land owners situated in a developing area, 2,581.4 acres of which were acquired. An award of RM10,000 per acre was awarded by the land administrator and this was upheld by the High Court after considering the valuation reports of common comparable value of lands in the vicinity. The appellant appealed contending that the award did not reflect the market value of the acquired lands. In addition, they prayed for an award for injurious affection of an area of 1.55 acres which was not dealt with by the judge nor was there any submission by the respondent.

Held, allowing the appeal with regard to the claim for compensation for injurious affection:

(1) The appellate court would not interfere with the findings of the learned judge with regard to the amount of compensation awarded unless there were cogent reasons to do so. On the facts, there were no reasons to interfere as the learned judge had considered every factor in determining the market value of the acquired lands (see p 142G–H).

(2) As the learned judge failed to consider the appellants' claim for injurious affection, the claim of compensation of RM9,300 was allowed (see p 142I–143A).

[Bahasa Malaysia summary

Perayu-perayu adalah tuan punya-tuan punya tanah yang terletak di dalam kawasan pembangunan, di mana 2,581.4 ekar telah diambil. Suatu award sebanyak RM10,000 seekar telah diawardkan oleh pentadbir tanah dan ini telah disahkan oleh Mahkamah Tinggi selepas mempertimbangkan laporan-laporan penilaian perbandingan biasa nilai tanah-tanah tersebut di dalam kawasan sekitar. Perayu telah merayu dengan menegaskan bahawa award tersebut tidak membayangkan nilai pasaran tanah yang telah diambil. Selanjutnya, mereka memohon untuk suatu award gangguan memudaratkan kawasan tersebut yang seluas 1.55 ekar yang tidak diadili oleh hakim dan tidak terdapat apa-apa hujahan daripada responden.

Diputuskan, membenarkan rayuan berkenaan dengan tuntutan untuk pampasan gangguan memudaratkan:

A (1) Mahkamah rayuan tidak akan campur tangan dengan penemuan hakim yang arif berkenaan dengan jumlah pampasan yang diawardkan kecuali terdapat alasan-alasan yang meyakinkan untuk berbuat demikian. Berdasarkan fakta-fakta, tiada sebab-sebab untuk mengganggu oleh kerana hakim yang arif telah mempertimbangkan setiap faktor di dalam menentukan nilai
B pasaran tanah-tanah yang telah diambil (lihat ms 142G–H).

(2) Oleh kerana hakim yang arif gagal mempertimbangkan tuntutan perayu untuk gangguan memudaratkan, tuntutan untuk pampasan sebanyak RM9,300 adalah dibenarkan (lihat ms 142I–143A).]

C

Notes

For cases on market value, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 1400–1421.

D

Cases referred to

Ng Tiou Hong v Collector of Land Revenue, Gombak [1984] 2 MLJ 35 (refd)

Siah Brothers Plantation Sdn Bhd v Pentadbir Tanah dan Daerah
E *Kuantan* [1993] 3 MLJ 51 (refd)

Legislation referred to

Land Acquisition Act 1960 s 8, First Schedule

F **Appeal from:** Land Reference No 15–47 of 1995 (High Court, Alor Setar)

Wong Chong Wah (*Lim Hoon Huan* with him) (*Skrine & Co*) for the appellants.

Roslan bin Hj Abu Bakar (Senior Federal Counsel) (State Legal Advisor's
G Office, Kedah) for the respondent.

Shaik Daud JCA (delivering judgment of the court): This appeal is in respect of a land acquisition matter and is against the decision of the High Court which had on 26 September 1995, confirmed the award of the Kedah Land Administrator. The declaration of the intended acquisition of the
H scheduled lands under s 8 of the Land Acquisition Act 1960 ('the Act') was published in the Government of Kedah Gazette on 3 March 1994. The scheduled lands form part of Kellang Lama and Home Divisions of Kuala Muda Estate totalling 2,581.4 acres.

The scheduled lands are located about six kilometers from the town of Sungai Petani, Kedah, and is divided by the Sungai Petani/Alor Setar main
I road and both sides have road frontage. It is not disputed that the scheduled lands are situated in a fast developing area. In the vicinity of the scheduled lands, are two housing schemes, a Teachers' Training College, the Institute

Tadbiran Awam northern region, Pusat Serenti and several other government departments. Therefore, there is potential for development. The land administrator awarded RM10,000 per acre and this award was upheld by the High Court. Hence the appeal to this court. It is the contention of the appellants that in the light of the position of the scheduled lands being in the midst of a developing area, the award of RM10,000 does not reflect the market value of the lands. The appellants pray for RM20,000 per acre. In addition, they pray for an award for injurious affection of an area of 1.55 acres amounting to RM9,300. This item of compensation though claimed was not dealt with by the learned judge.

It cannot be denied that for the purpose of the Act an award of compensation for acquisition of land is based on the market value of the land in question at the time of the gazette notification as provided for in the First Schedule to the Act. What is market value has been amply explained in *Ng Tiou Hong v Collector of Land Revenue, Gombak* [1984] 2 MLJ 35, a decision of the Federal Court.

For estate land, as in the present case, several other factors ought also to be considered in order to arrive at the market value. The main factor is the comparable value of other estate lands transacted in the same area or in the vicinity where the nature and terrain of the land are more or less the same. (See *Siah Brothers Plantation Sdn Bhd v Pentadbir Tanah dan Daerah Kuantan* [1993] 3 MLJ 51).

In this respect, the appellants' valuers had provided four comparables while the respondent's valuation report contained eight comparables, all relating to estate lands in the vicinity and elsewhere. The learned judge found a common comparable transaction in both valuation reports and this concerned a piece of land about one kilometer from the Bakar Arang Industrial area comprising of 555.633 acres. This land on Lot 1029 was transacted at RM13,500 per acre on 22 July 1990. This land is also near the Sungai Petani/Butterworth main road. At the time of the transaction, there was a rapid industrial development in the surrounding area. The learned judge came to the conclusion that this common comparable was the best comparable to take into consideration as the other comparables were situated in the Kulim district, which is nearer to Penang. Although the learned judge considered the common comparable to be the most suitable he nevertheless considered all the other comparable transactions contained in both the appellants' and the respondent's valuation reports.

On going through his judgment, we are satisfied that the learned judge had considered every factor in order to determine the market value of the scheduled lands and he has given his reasons for accepting some and rejecting others. These are findings of fact of which this court ought not to interfere unless there are cogent reasons to do so. We find none. We are of the view that the learned judge had based his decision on correct principles of law relating to land acquisition. Having considered this matter carefully we can find no reason to interfere with the findings of the learned judge on the amount of compensation for the scheduled lands in question. However, we did find that the learned judge had failed to consider the appellants'

claim for injurious affection. In his submission before us, the learned senior federal counsel on behalf of the respondent, had also not touched on this item of compensation.

In the light of this, we allowed the appeal only to the extent of allowing the claim of compensation of RM9,300 for injurious affection with interest at 8% pa from the date of possession to the date of realization, and confirmed the learned judge's decision on the amount of compensation awarded for the scheduled lands. We also ordered fifty percent of the costs to the appellants here and in the court below and the deposit to be refunded to them.

Appeal allowed in part.

Reported by Chin En Tek